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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 986

HARBOR MARINE CONTRACTING COMPANY, A CORPORATION, AND LIBERTY MUTUAL INSURANCE COMPANY, A CORPORATION, PETITIONERS

v.

SAMUEL S. LOWE, DEPUTY COMMISSIONER OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, SECOND COMPENSATION DISTRICT, AND FRANCES RIVIELLO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE DEPUTY COMMISSIONER IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 110–114) is reported in 61 F. Supp. 964. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 122–125) is reported in 152 F. 2d 845.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 24, 1945 (R. 125). The

petition for a writ of certiorari was filed on March 23, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judical Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether there was substantial evidence to sustain the finding of the Deputy Commissioner that the claimant's husband suffered death from an accidental injury, as that term is defined in Section 2 (2) of the Longshoremen's and Harbor Workers' Compensation Act, arising out of and in the course of his employment.

STATUTE INVOLVED

Section 2 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, 44 Stat. 1424 (33 U. S. C. 902) provides as follows:

> Definitions. When used in this Act—
>
> * * * * *
>
> (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.
>
> * * * * *
>
> (11) "Death" as a basis for a right to

compensation means only death resulting from an injury.

STATEMENT

Claimant Frances Riviello's deceased husband, Biagio Riviello, was working for the Harbor Marine Contracting Company on February 15, 1943, and was assigned to assist in the cleaning of the boiler of a ship known as Hull No. 162 in New York Harbor (R. 23, 33). The task involved sweeping up several inches of soot which covered the boiler floor and placing it in bags (R. 41, 42). The air within the boiler was very dusty, ventilation was poor, and it was necessary to wear damp cloths or masks over one's nose and mouth for protection (R. 42, 65).

After working for about an hour at this task, deceased complained that he was not feeling well and his gang foreman reported to the head foreman that Riviello "could not take it" (R. 33, 44, 50). The latter was then assigned to work on deck, carrying fifteen pound bags of soot from the ship to the dock, a distance of about a block (R. 34, 46, 53). After three-quarters of an hour of this work, deceased became very ill and, upon the recommendation of an Army doctor, located on the pier, he was sent to a hospital (R. 34, 49). It was found that he had suffered a myocardial infarct (R. 55). Deceased had apparently had a condition of coronary sclerosis, a deterioration of

the coronary arteries, at the time of his employment (R. 9, 57, 59), although he had never suffered from any previous attacks and was unaware of this illness (R. 26, 95).

Deceased remained in the hospital until March 30, 1943, when he was discharged and returned home. He remained at home, convalescing and doing no work, for several weeks, but thereafter suffered a recurrence of the pain over his heart which necessitated medical aid (R. 27). He reentered the hospital on April 26th and died there on May 5, 1943, from cardiac failure (R. 23).

His attending physician testified that his working conditions on February 15th had precipitated his seizure and death (R. 77–79, 91). The Deputy Commissioner affirmed this causal relationship, holding that deceased had sustained an accidental injury in his employment within the meaning of the Act (R. 9–10), and made an award for claimant and her children (R. 11). In an action to enjoin the award, brought by the Harbor Marine Contracting Company and its insurer, the Liberty Mutual Insurance Company, petitioners herein, the District Court for the Southern District of New York granted defendants' motions for a summary judgment, holding that there was substantial evidence to support the findings of the Deputy Commissioner (R. 113). Upon appeal, this judgment was unanimously affirmed by the Circuit Court of Appeals for the Second Circuit (R. 122–

125), which refused to disturb the definition of "accidental injury" that the Federal courts have consistently followed in their interpretation of this Act.

ARGUMENT

1. Both the district court and the circuit court of appeals in the instant case have held that the Deputy Commissioner's finding of death from accidental injury arising out of and in the course of deceased's employment was supported by the evidence.[1] Such finding of fact as well as the inferences to be drawn therefrom are final and conclusive and not subject to judicial review. *Voehl* v. *Indemnity Insurance Co.*, 288 U. S. 162, 166; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 287; *South Chicago Coal and Dock Company et al.* v. *Bassett*, 309 U. S. 251; *Parker* v. *Motor Boat Sales*, 314 U. S. 244, 246.

Petitioners contend that the facts herein do not constitute "accidental injury" within the meaning of the statute, on the premise that the events that occurred were not "unusual, undesigned, fortuitous and unexpected" (Pet. 6). This contention, however, has been rejected by the federal courts in construing the Longshoremen's and Harbor Workers' Act. *Hoage* v. *Employers' Liability*

[1] The Longshoremen's and Harbor Workers' Act, which extends the principle of workmen's compensation to an injured employee or his family, is to be liberally construed. *Baltimore & Philadelphia Steamboat Co.* v. *Norton*, 284 U. S. 408, 414.

Assur. Corp., 64 F. 2d 715 (App. D. C.),[2] certiorari denied *sub nom. Employers' Liability Assur. Corp.* v. *Kerper*, 290 U. S. 637; *Commercial Casualty Ins. Co.* v. *Hoage*, 75 F. 2d 677 (App. D. C.), certiorari denied, 295 U. S. 733; *Hoage* v. *Royal Indemnity Co.*, 90 F. 2d 387 (App. D. C.), certiorari denied *sub. nom. Royal Indemnity Co.* v. *Cardillo*, 302 U. S. 736; *Pacific Employers' Ins. Co.* v. *Pillsbury*, 61 F. 2d 101 (C. C. A. 9); *Henderson* v. *Pate Stevedoring Co.*, 134 F. 2d 440 (C. C. A. 5); *Baltimore & O. R. Co.* v. *Clark*, 59 F. 2d 595 (C. C. A. 4).[3] Thus all of the Circuit Courts of Appeal that have passed on the question are in agreement that an existing disability or disease to which an individual may be subject at the time of his employment affords no basis for denying recovery under this Act if employment has aggravated the disease or disability and there is, hence, a causal relationship between the employment and the injury.

2. Petitioners rely on a number of state court decisions, interpreting various state workmen's compensation acts, to support their view. Because of the differences in the Acts and the differences in the liberality of construction, both from

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[2] The Longshoremen's and Harbor Workers' Act was made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600.

[3] This contention was early discarded in England when it was first raised in connection with the English workmen's compensation act, *Fenton* v. *J. Thorley & Co., Ltd.* [1903], A. C. 443; *Clover, Clayton & Co., Ltd.* v. *Hughes* [1910], A. C. 242.

State to State and in comparison with the Federal Act, these decisions do not seem to warrant detailed discussion. Particular mention is made of a few decisions of the New York State courts, such as *La Fountain* v. *La Fountain,* 284 N. Y. 729, because of the fact that the Federal statute was patterned after the New York Act. But the Federal Act has by now been independently interpreted by the Federal courts, and, indeed, as the court below pointed out (R. 124), subsequent New York cases cast considerable doubt upon the more restrictive interpretation. The present trend of the New York decisions seems to conform more closely to the decisions of the Federal courts. *Abrams* v. *Albany County,* 266 App. Div. 807, 885, and the cases cited therein.

3. Petitioners allege that the decision below will have the effect of converting workmen's compensation into health or life insurance, will be detrimental to workers since it will raise the physical standards for laborers, and will saddle the public with the additional expense involved in insuring against cases of this kind. These arguments have long been advanced and rejected by the courts. *E. g., Grain Handling Co.* v. *Sweeney,* 102 F. 2d 464, 466 (C. C. A. 2), certiorari denied *sub nom. Grain Handling Co.* v. *McManigal,* 308 U. S. 570; cf. *Madden's Case,* 222 Mass. 487. Compensation was not awarded to the claimant because her husband had heart disease; the deputy commissioner found that there was a causal

relationship between the decedent's work and working conditions and his injury (R. 9). Cf. *Carson* v. *Cardillo*, 132 F. 2d 604 (App. D. C.); *Trudenich* v. *Marshall*, 34 F. Supp. 486 (W. D. Wash.).

CONCLUSION

The decision below is correct and there exists no conflict. We respectfully submit that the petition for a writ of certiorari should be denied.

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